

PETER C. HARVEY
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

By: Jeri L. Warhaftig
Deputy Attorney General
Tel. No. (973) 648-7457

FILED

March 17, 2003

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

_____)
IN THE MATTER OF:

AYAD JIHAYEL, M.D.
LICENSE NO. 43467

CONSENT ORDER
OF REINSTATEMENT

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY
_____)

This matter was most recently opened to the State Board of **Medical** Examiners ("Board") upon receipt of Dr. Jihayel's application for **reinstatement** of **licensure**. The Board records in this matter reflect **that in** November 2002, Dr. Jihayel voluntarily surrendered his **license** and **advised** the Board that **he** had relapsed into a prior substance abuse problem and was undergoing **treatment** under the auspices of the Physician's Health Program of the Medical Society of New Jersey (PHP).

The Board's file reflects that Dr. Jihayel has battled a substance abuse problem since before his first order of surrender of licensure in 1991. Since that initial surrender, his license

CERTIFIED TRUE COPY

has twice **been** suspended and **restored** as a result of relapses (October, 1992 and April, 1996). In November of 1998 Dr. Jihayel entered into a **consent** order with the Board pursuant to which his **license** was restored after a suspension of approximately eighteen months. At the time, the doctor agreed to **participate** in the PHP and to remain **compliant** with their requirements as well as those of the Board. Thereafter the restrictions on his license **were** reduced and pursuant to an **Order** of July 2001, he was granted an unrestricted license. Nonetheless, he **agreed** to remain a participant in the PHP program. According to the PHP, Dr. Jihayel remained drug free and compliant for approximately five years until in or about May 2002.

In support of the instant application, Dr. Jihayel appeared before a **committee** of the Board accompanied by Dr. Louis Baxter, Executive Medical Director of the PHP. According to Dr. Jihayel's sworn testimony, in May 2002, in response to a number of unusual professional and personal stressors, he began to self medicate with Loricet, a controlled dangerous substance. The drugs he ingested were samples provided to him by a colleague who **was** unaware of his substance abuse history. Although the doctor remained in active participation with **the** PHP during this **period** of relapse, he was successful in evading the random urine monitoring required by his agreement with the PHP and thus his urine did not test positive for any forbidden **substances**.

According to Dr. **Baxter**, Dr. Jihayel is now completely compliant with the requirements of the PHP and has refrained from the practice of medicine since his meeting with the PHP in October 2002. Dr. Baxter testified that his independent inquiries corroborated the doctor's testimony in that he found no proof that Dr. **Jihayel** was ever impaired while on duty or that he had ingested CDS **after** early August 2002. He further advised the Board that the doctor has an offer of employment and that his prospective employer is fully aware of **the** doctor's prior treatment for substance abuse. Both Dr. Baxter and Dr. Jihayel testified that Dr. Jihayel has an improved support system in place which would help him avoid a future relapse in the face of stressful circumstances.

The Board is mindful of the doctor's lengthy history with the Board and his **prolonged** battle with substance abuse. The doctor's conduct **since** May 2002, i.e. the relapse, voluntary cessation of drug abuse and renewed commitment to treatment, **are** indicative of both **the** doctor's personal struggle with a disease, and his capacity to persevere in the face of adversity and benefit from appropriate treatment. When viewed in light of the doctor's nearly five years of drug free **compliance** with the PHP, the self administration of Loricet over a period of approximately four months can be seen as **an** isolated **relapse** within the chronic disorder of substance abuse rather than a flagrant disregard for the authority of the Board and/or the PHP. For that reason, the

Board finds that the doctor's restoration of restricted licensure **is** appropriate at this time. **However,** the Board is **also** mindful of the fact that this most recent **relapse** demonstrates a manner of drug **seeking** behavior which Dr. Jihayel has demonstrated in the past and thus, in part, demonstrates that his earlier **treatment,** the constraints of the PHP and a **desire** to retain his license as a physician have not successfully curtailed the **doctor's behavior.** Upon his **issuance** of an unrestricted license in July 2001 Dr. Jihayel **agreed** to the automatic suspension of **his license** in the event of a relapse. Given the history of this matter, the Board has adopted the position of both **the** doctor and the PHP to the effect that any **future** relapse will result in entry of an automatic order of revocation.

The Board having **determined** that **the** within order is adequately protective of the public health, safety and welfare,

IT IS ON THIS 12 **DAY OF** March, 2003;

ORDERED:

1. Ayad Jihayel, M.D.'s license to practice medicine and surgery in the State of New Jersey is hereby reinstated provided, **however,** that Dr. Jihayel shall comply with the restriction set forth **herein.**

2. Dr. Jihayel shall continue his participation in the Physician's Health Program and shall **be** compliant with all of that

program's **requirements**. In particular Dr. Jihayel's participation in that program shall be subject to the following conditions:

- a. **Absolute** abstinence from all psychoactive **substances** except upon **prescription** from a treating physician for a documented medical condition with notification to the Executive Medical Director of the PHP;
- b. Documented attendance at **the** support group of **Alcoholics** Anonymous as required by the PHP but not less than **three meetings** per week;
- c. Monthly face to face visits **with** a representative of the PHP for a minimum of one year from entry of the within order;
- d. Thrice **weekly** random urine monitoring to commence upon Dr. Jihayel's acceptance of a position of employment;
- e. Quarterly hair analysis;

3. The PHP shall obtain the agreement of Dr. Jihayel's employer to monitor his demeanor and professional practice and to report on such to the PHP immediately in **the** event of any relapse behavior and, in any event, **on a quarterly basis**.

4. The PHP shall provide quarterly reports to the Board of Medical Examiners **which** shall recount the employer's reports, **the** results of urine and hair analyses, and a general summary **of** the doctor's **compliance** with the PHP and the therapeutic regime.

5. Dr. **Jihayel** shall continue in an aftercare program with Dr. Arnold Washton until such time **as** Dr. Washton agrees that such

treatment **is** no longer required and for a minimum period of one year. The PHP shall obtain Dr. Washton's **agreement** to notify **the** PHP and the Board in the event **that** Dr. Jihayel unilaterally ceases participation in the aftercare program.

6. Dr. Jihayel shall remain under the psychiatric **care** of Dr. Thomas Sprague until such **time** as Dr. Sprague, the PHP and Dr. Jihayel **agree** to notify the Board that such treatment is no **longer** warranted.

7. The PHP, through its execution of a copy of the within consent order, **hereby** agrees to provide the Board of Medical Examiners with immediate notification in the event that it is made aware of any evidence of **a** relapse or noncompliant behavior by Dr. Jihayel.

8. The PHP hereby agrees to notify the Board of Medical Examiners within twenty four hours in the event **that** Dr. Jihayel fails to comply with a request for a urine specimen.

9. Dr. Jihayel hereby specifically **acknowledges** that any evidence of a positive urine screen or **hair** analysis which indicates the use of a controlled dangerous substance not otherwise authorized by paragraph 2(a) of this order or a failure to comply with a PHP request for a urine specimen, shall result in an immediate application to the Board President without prior notice for an emergent suspension of **respondent's license**. Dr. Jihayel shall have the right to contest such a suspension on five days

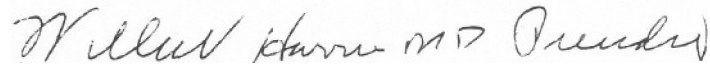
notice to **the** Attorney **General**. In the **event the** suspension is contested, proofs shall **be** limited to an authenticated, positive drug screen report and **the** burden of proof of invalidity of **such** a report or the reasonableness of Dr. Jihayel's failure to provide a urine **sample** shall be upon Dr. Jihayel.

10. In the event **that** Dr. Jihayel's **license** is subject to a temporary **suspension** pursuant to the **proceeding** paragraph, he **hereby** agrees to the Board's entry of an order of revocation of licensure thirty days following **the Order** of Suspension.

11. The Board hereby **approves** Dr. Jihayel's employment by Cardiovascular Surgical Associates, P.A. in Passaic, New Jersey under the supervision of **Dr. Raj Kaushik, M.D.** In the event that Dr. Jihayel accepts employment with **an** additional or alternative practice, he shall provide the Board with notice of his place employment within fourteen days of commencing his new position. He shall also provide the Board with a list of those hospitals at which he obtains privileges.

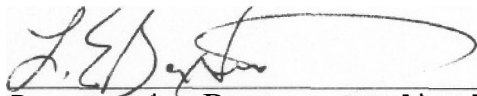
12. In the event that Dr. Jihayel's State CDS and Federal DEA registrations are **restored**, he shall maintain a separate, contemporaneous log of **all** CDS he **prescribes**. The log shall reflect the name of the patient, the medical record **number** of the patient, the CDS prescribed, **the** amount prescribed, and the date of the prescription. This log shall **be** made **available** to the Board

upon **request** and shall **be** provided within 72 **hours** of your receipt of such request.

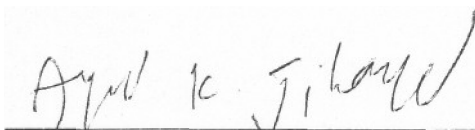


Dr. William V. Harrer, President
State Board of Medical Examiners

I have read the **within** order and understand its terms and conditions.
I **agree** to be bound **by** the **order** and **hereby** consent to its entry.



Dr. Louis Baxter, Medical Director
Physicians' Health Program



Dr. Ayad Jihayel